91-1714

FILED
APR 22 1992
OFFICE OF THE CLERK

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1991

CAROLYN FINDLEY PRICE

Petitioner

v.

DON CARPENTER SHERIFF OF TARRANT COUNTY, TEXAS,
and GEORGE M. CAMPBELL, CHIEF DEPUTY SHERIFF OF TARRANT COUNTY, TEXAS

Respondents

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

(NO. 91-1553)

PETITION FOR WRIT OF CERTIORARI

Carolyn Findley Price
Texas Bar No. 07007300
417 Williams Street
Arlington, Texas 76010
(817) 274-5300
(214) 522-9253 Facsimile number.

PETITIONER PRO SE.

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Petitioner Carolyn Findley Price respectfully requests that a writ of certiorari issue to review the judgement and

order of the United States Court of Appeals for the Fifth Circuit issued December 13, 1991 and affirmed, via denial of petitioner's motion for rehearing, on January 23, 1992.

QUESTION PRESENTED FOR REVIEW

Can conclusive evidence of a protected property right be negated by subsequent post-deprivation process ?

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OPINIONS BELOW

The opinion of the Fifth Circuit, which is unpublished, is printed as Appendix A. The opinion of the District Court for the Northern District of Texas, Fort Worth Division is printed as Appendix B. It is published. Price v. Carpenter, 758 F. Supp. 403 (N. D. Tex. 1991). The order of the District Court denying petitioner's motion to amend findings of court pursuant to FRCP 52(b) and to amend the judgment accordingly and the order of the Fifth Circuit denying petitioner's petition for rehearing are printed as Appendix C.

JURISDICTION

The opinion of the Fifth Circuit was filed on December 13, 1991. Petitioner's petition for rehearing was denied by that court on January 23, 1992. This Court's jurisdiction is invoked under 28 U. S. C § 1254

(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The pertinent provisions of the Fourteenth Amendment to the United States Constitution, of 42 U.S.C. § 1983, and of Texas Revised Civil Statutes Annotated art. 2372p-3 are set forth in Appendix D.

STATEMENT OF THE CASE

Petitioner, a licensed Texas attorney, filed suit alleging that respondents had denied her due process of law in violation of the Fourteenth Amendment by the revocation of her exemption from the licensing requirements of TEX. CIV. STAT. ANN. art. 2372p-3. Jurisdiction in the District Court was based

on 28 U.S.C.S. § 1343 (3). The District Court found that, although petitioner had a substantial and protected property interest, sufficient post-deprivation process had been accorded her and granted summary judgement for the respondents. The Fifth Circuit Court of Appeals affirmed the decision of the District Court upon other grounds finding that, in spite of the acknowledged availability of remedies under Texas state law and respondents' admission that petitioner was entitled to due process protection, petitioner had failed to establish the existence of a property right. Petitioner's petition for rehearing was denied.

REASON FOR GRANTING THE WRIT

THERE IS A CONFLICT BETWEEN THE FIFTH CIRCUIT COURT OF APPEALS' DECISION IN THIS CASE AND PRIOR DECISIONS OF THIS COURT.

Pursuant to Supreme Court Rule 10.1(c), review of this case is important as the Fifth Circuit has issued an opinion which directly conflicts with this Court's opinion in Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1, 98 S.Ct. 1554, 56 L.Ed.2d 30 (1978).

It is almost axiomatic that inquiry into due process violations under the Fourteenth Amendment is a two step process. Morrissey v. Brewer, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972). The threshold issue in any due process claim is the existence of a protected property right. Id.

It is also well-settled that property interests are not created by the Fourteenth Amendment, but come into existence through state law. Logan v. Zimmerman Brush Co., 455

U.S. 422, 102 S.Ct. 1148, 71 L.Ed.2d 265 (1982); Goss v. Lopez, 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975); Board of Regents v. Roth, 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972). Any significant property interest, even a statutory entitlement, is protected. Fuentes v. Shevin, 407 U.S. 67, 92 S. Ct. 1983, 32 L.Ed.2d 556 (1972) at 1997.

This Court has previously held that a license to practice law is worthy of due process protection. In re Ruffalo, 390 U.S. 544, 88 S.Ct. 1222 (1968). Under Texas law, petitioner, as a licensed attorney, is exempt from the state bail bondsman licensing requirements under specified circumstances. TEX. REV. CIV. STAT. ANN. art. 2372p-3 § 3(e); Minton v. Frank, 545 S.W.2d 442 (Tex. 1976). This exemption is limited to persons licensed to practice law and, as such, is a part of petitioner's law license. This Court

has recognized that even a partial deprivation of property may merit protection under the Fourteenth Amendment. Peralta v. Heights Medical Center, Inc., 485 U.S. 80, 108 S.Ct. 896, 99 L.Ed.2d 75 (1988); Connecticut v. Doehr, 501 U.S. ___, 111 S.Ct. 2105, 115 L.Ed.2d 1 (1991).

This Court has long considered the availability of local remedies as evidence of a protected property right. This Court in Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1, 98 S.Ct. 1554, 56 L.Ed.2d 30 (1978) stated:

> "The availability of such local law remedies is evidence of the state's recognition of a protected property interest." p. 11

In this case, respondents' brief to the District Court acknowledges the existence of

state law remedies for the wrong done to petitioner, as follows:

> "Because of the availability of adequate remedies, it can not be said that any deprivation occurred without due process or that federal injunction is necessary." pp. 10 - 11.

The District Court correctly concludes that petitioner's interest was worthy of due process protection and could not be terminated except for cause. 758 F. Supp. at 406.

Respondents' brief to the Fifth Circuit also admits: "Defendants concede that procedural due process is required in this case to protect Plaintiff's interest." p. 8.

The Fifth Circuit itself acknowledges the existence of state law protections for

petitioner's property interest. (Appendix A, p. 13.) Despite these conclusive admissions by respondents and both courts below, the Fifth Circuit held that petitioner did not meet her burden in establishing the existence of a protected property right. This holding is clearly contrary to this Court's reasoning in Memphis Light. The Fifth Circuit reaches this erroneous conclusion because it fails to adhere to the two-step analysis that this Court has utilized since Morrissey and improperly intermingles analysis of the property right with analysis of the process due. The Fifth Circuit indicates that process provided subsequent to both the deprivation and the assertion of a property right can effectively abrogate conclusive evidence of the pre-deprivation existence of that right. Under the Fifth Circuit's analysis, the process defines the right, the right does not define the process. This position directly conflicts with this Court's

historical method of due process analysis and requires reversal by this Court.

Petitioner has conclusively established a property right which is worthy of constitutional due process protection. Having met the threshold test under Morrissey, petitioner is entitled to an examination of the process due.

For these reasons, this Court should issue a writ of certiorari, summarily reverse the decision of the Fifth Circuit, and remand this case to the Court of Appeals without further briefing or argument here.

Respectfully submitted,

Carolyn Findley Price
Carolyn Findley Price
Texas Bar No. 07007300
417 Williams Street
Arlington, Texas 76010

(817) 274-5300
(214) 522-9253 Facsimile number

PETITIONER PRO SE

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Petition for Writ of Certiorari was mailed first-class postage prepaid in accordance with U. S. Supreme Court Rule 29. 3 to Ms. Ann Diamond, Assistant District Attorney, Tarrant County District Attorney's Office, 401 West Belknap, Fort Worth, Texas 76196-0401, telephone number (817) 884-1233, counsel for the respondents' on this the 22nd day of April, 1992. By this action, all parties required to be served have been served.

Carolyn Findley Price

Carolyn Findley Price

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 91-1553
Summary Calendar

CAROLYN FINDLEY PRICE,

Plaintiff-Appellant,

versus

DON CARPENTER, Tarrant County Sheriff, Et Al.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Texas (CA4 90 639 E)

(December 13, 1991)

Before JONES, DUHE, and WIENER, Circuit Judges.[1]

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[1] Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide

EDITH H. JONES, Circuit Judge:

Appellant Carolyn Findley Price challenges the district court's summary judgment rejecting the procedural due process claim she filed when her bail bond exemption was revoked by the Sheriff of Tarrant County. For somewhat different reasons than those stated by the district court, we affirm.

As an attorney, Price should be aware that one may only be deprived of property without due process if one had a property right to begin with. As the Supreme Court put it, the "hallmark of property . . . is an individual entitlement grounded in state law, which cannot be removed except 'for cause.'" Logan v. Zimmerman Brush Co., 455 U.S. 422, 102 S.Ct. 1148 (1982). As plaintiff, Price had the burden to establish

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particular cases on the basis of well-settled principals of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

the existence of a property interest, founded on Texas law, in writing bail bonds without a license before we can reach the evaluation of the "deprivation" of that interest.

Price has not carried her burden. Indeed, a large portion of her brief is devoted to a quarrel with the administrative determination that her activity did not fall within the Texas's statute's exemption that allows attorneys, without obtaining a bondsman's license, to execute bail bonds or act as sureties for persons "they actually represent in criminal cases." Texas Rev. Civ. Stat. Ann. art. 2372(p)(3) XX 3(e). As a result of this administrative determination, Price has no property interest in continuing to write bail bonds under these circumstances. Perhaps she could have gotten that administrative determination overturned on appeal, but she chose not to seek judicial review under § 11 of the Bail Bond Act or to pursue other state remedies. It is

not our function to sit as a "super review board" to pass upon the correctness of the administrator's determination. Bishop v. Wood, 426 U.S. 341, 96 S. Ct. 2074, 2078, 2080 (1976). In order to hold that Price has a property interest in continuing to write bail bonds for defendants she represents solely for that purpose, however, we would have to do precisely that. We decline the invitation.

Because Price has not established a property interest under Texas law in her unlicensed attempts to execute bonds for criminal defendants, she failed to satisfy the threshold issue in a procedural due process claim. Summary judgment was appropriately granted.

The judgment of the district court is **AFFIRMED.**

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

CAROLYN FINDLEY PRICE	§	
	§	
VS.	§	CIVIL ACTION
	§	NO.
	§	4-90-639-E
DON CARPENTER, SHERIFF	§	
FOR TARRANT COUNTY,	§	
TEXAS AND GEORGE	§	
CAMPBELL, ASSISTANT	§	
CHIEF DEPUTY SHERIFF	§	
FOR TARRANT COUNTY,	§	
TEXAS	§	

MEMORANDUM OPINION AND ORDER

Before the Court is defendant's motion to dismiss or in the alternative for summary judgement and plaintiff's response thereto. After thorough consideration of the briefs and applicable law, the Court makes the following determination.

The facts of this lawsuit are largely undisputed. The plaintiff, Carolyn Findley Price, is a practicing attorney licensed in

the State of Texas. During July and August, 1990, the plaintiff executed bail bonds for approximately 25 persons incarcerated on pending criminal charges in various county jails in the State of Texas.[1] Because the plaintiff was not licensed by the County Bail Bond Board to give or execute bail bonds, plaintiff was required to execute bail bonds pursuant to an exception contained in Section 3 (e) of the Bail Bond Act.[2] The Bail Bond Act provides, in the pertinent part, that:

Section 3(a). In a county that has

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[1]The record is not clear precisely how many of the 25 persons for whom the plaintiff executed bail bonds were detainees at the Tarrant County Jail. In any event, it is undisputed that plaintiff executed bail bonds for at least some of the individuals incarcerated at the Tarrant County Jail and that these actions formed the basis for the Sheriff's Department refusing to allow the plaintiff to execute further bail bonds pursuant to the Bail Bond Act.

[2]Tarrant County, Texas, is a county with a population exceeding 110,000 and is therefore a "Bail Bond Board County" under the terms of Tex. Rev. Civ. Stat. Ann. art 2372p-3, commonly known as the Bail Bond Act.

> a board, no person may act as a bondsman except:
>
> (1) persons licensed under this Act, and
>
> (2) persons licensed to practice law in this state who meet the requirements set forth in Subsection (e) of Section 3 of this Act.
>
> . . . .
>
> Section 3 (e). Persons licensed to practice law in this state may execute bail bonds or act as sureties for persons they actually represent in criminal cases without being licensed under this Act, but they are prohibited from engaging in the practices made the basis for revocation of license under this Act and if found by the sheriff to have violated any term of this Act, may not qualify thereafter under the exception provided in this subsection unless and until they come into compliance with those practices made the basis of revocation under this Act.[3]

The Tarrant County Sheriff's Department accepted such bail bonds executed by the plaintiff until on or about August 8, 1990 when the defendant discovered that the plaintiff was not the attorney-of-record for

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[3]Tex. Rev. Civ. Stat. Ann. art. 2372p-3, § 3 (Vernon Supp. 1990)

any of the persons for whom she was bonding. Further, plaintiff was not "actually representing" these individuals in their criminal cases as required by the Act. Upon learning that the plaintiff was executing bail bonds for inmates she did not represent in subsequent criminal proceedings, the defendant notified the plaintiff by letter dated August 8, 1990, that she would no longer be permitted to execute bail bonds until she complied with the Bail Bond Act. Plaintiff requested by letter dated August 13, 1990, that the decision be rescinded until the due process requirements of Tex. Rev. Civ. Stat. Ann. art. 2372p-3, § 10 (Vernon Supp. 1990) were satisfied. Because Section 10 of the Act pertains to the revocation or suspension of a bail bond license by the County Bail Bond Board,[4] the

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[4]The Bail Bond Act provides in pertinent part:

Sec. 10 (a) The board may revoke or suspend a license in accordance with the

Tarrant County Sheriff's Department construed plaintiff's August 13, 1990 letter as a request for a post-action due process hearing

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procedure provided in this section for the violation of any provision of this Act.

(b) Notice of a hearing to suspend or revoke shall be given by certified mail addressed to the last known address of the licensee at least 10 days prior to a date set for the hearing.

(c) The notice shall specify the charges of violation of this Act made against the licensee, and no other charges shall be made at the hearing pursuant to the notice.

(d) The hearing shall afford to the licensee opportunity to be heard, to present witnesses in his behalf, and to question witnesses against him.

(e) A record of the hearing shall be made. It shall be made available to the licensee on his request subject to his paying reasonable costs of transcription.

(f) If the licensee fails to maintain the security deposit at the proper ratio required by this Act, under Subsection (g) of Section 6 of this Act, the board shall immediately suspend the license while the violation continues. No prior notice or a hearing is necessary. Once the proper ratio is regained, the suspension shall be immediately lifted. the board shall revoke the license with prior notice or hearing if the licensee fails to pay any final judgement connected with the licensee's bonding business within 30 days and there is not sufficient property held as security to satisfy the final judgement.

before the Sheriff's designee.

By letter dated August 16, 1990, Defendant George Campbell, Assistant Chief Deputy Sheriff for Tarrant County, Texas, notified plaintiff that a public hearing had been scheduled for "Tuesday August 23, 1990" to hear plaintiff's complaint. It was later determined that the public hearing was erroneously scheduled on a non-existent calendar date. Defendant, upon discovering the error, notified the plaintiff of the correct date, Tuesday August 21, 1990. Further, defendant corrected within a half hour of posting the four public notices which initially showed the incorrect date.[5]

The plaintiff filed the present suit under 42 U.S.C. § 1983 on August 21, 1990,

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[5] Despite the confusion concerning the date upon which the hearing would occur, the record indicates that the plaintiff and all interested parties were present at the hearing on Tuesday August 21, 1990.

the same day upon which the post-action hearing was scheduled. In her complaint, plaintiff alleges that she was denied due process of law under the Fourteenth Amendment of the United States Constitution.[6] Specifically, plaintiff contends that Defendant Campbell failed to allow plaintiff an opportunity to be heard by way of notice and hearing prior to the August 8, 1990

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[6] The Supreme Court has stated that a suit may be brought pursuant to 42 U.S.C. § 1983 for violations of procedural process under the Fourteenth Amendment of the Constitution. Zinermon v. Burch, 110 S.CT. 975, 983 (1990); see also Matthias v. Bingley, 906 F.2d 1047, 1051 (5th /Cir. 1990); Findeisen v. North East Independent School District, 749 F.2d 234 (5th Cir. 1984). However, in procedural due process claims, "the deprivation by state action of a constitutionally protected interest in 'life, liberty, or property" is not in itself unconstitutional; what is unconstitutional is the deprivation of such an interest without due process of law." Zinermon, supra, at 983 (emphasis original). Thus, procedural due process protects persons not from the deprivation of such interests, but from the mistaken or unjustified deprivation of life, liberty, or property without due process of law. See Carey v. Piphus, 435 U.S. 247, 259 (1978).

revocation of plaintiff's exemption from the Bail Bond Act. Plaintiff further alleges that she was denied her request for a recision from the August 8, 1990 revocation and such denial was in conscious disregard of plaintiff's due process rights guaranteed by the constitution. Therefore, plaintiff requests that defendants be permanently enjoined from depriving plaintiff of her property without due process of law. Plaintiff further requests that she be awarded nominal and punitive damages, court costs, and reasonable attorney's fees.

The Fourteenth Amendment of the Constitution provides that no State shall "deprive any person of life, liberty, or property without due process of law." The first step in determining what protections are afforded by the due process clause is to identify a property or liberty interest entitled to due process protection. Brock v.

Roadway Express, Inc., 481 U.S. 252, 261 (1987); see also Kentucky Dept. of Corrections v. Thompson, 490 U.S. 454, 460 (1989): Augustine v. Doe, 740 F.2d 322, 327 (5th Cir. 1984). In making such determination, the Court, in essence, must decide whether plaintiff had a property interest sufficient to require the defendant to give adequate notice and hearing prior to her suspension.[7] Bd. of Regents v. Roth, 408 U.S. 564 (1972).

Property interests can take many forms. Roth, 408 U.S. at 576; see, e.g., Barry v. Barchi, 443 U.S. 55 (1979) (license for horse trainer protected); Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1 (1978) (utility service); Dixon v. Love, 431 U.S.

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[7] Plaintiff has alleged that the Sheriff's Department violated her due process rights as to her property interests only. Therefore, the court declines to consider to what extent plaintiff's liberty interests may also be implicated.

105 (1977) (driver's license); Mathews v. Eldridge, 424 U.S. 319, (1976) (disability benefits); Goss v. Lopez, 419 U.S. 565 (1975) (high school education); Connell v. Higginbotham, 403 U.S. 207 (1971) (government employment) ; Bell v. Burson, 402 U.S. 535 (1971) (driver's license); Goldberg v. Kelly, 397 U.S. 254 (1970) (welfare benefits). Property interests are not created by the constitution, but rather are created and defined by state law. Bishop v. Wood, 426 U.S. 341, 344 (1976); Roth, 408 U.S. at 577. "The hallmark of property . . . is an individual entitlement grounded in state law, which cannot be removed except 'for cause.'"[8] Logan v. Zimmerman Brush Co., 455 U.S. 422, 430 (1982). In this case, state law has created a clear expectation that licensed

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[8] In essence, plaintiff's right to execute bail bonds under Section 3 (e) was suspended "for cause." (i.e. violation of "actual representation" terms of Section 3 (e)) and was not subject to an "at will" suspension by the Tarrant County Sheriff's Department.

attorneys may execute bail bonds provided they actually represent the individual bonded out of county jail in subsequent criminal proceedings. Barry, 443 U.S. at 64 n.11. This is not a mere abstract possibility for benefit, but a statutorily-created entitlement that state law has recognized and secured as a protected property interest.[9] Roth, 408 U.S. at 577. As such, the Court finds that the plaintiff has asserted a legitimate "claim of entitlement . . . that [she] may invoke at a hearing." Perry v. Sindermann, 408 U.S. 539, 601 (1972).

"Once it is determined due process applies, the question remains what process is due." Brock, 481 U.S. at 261. It is important to note that plaintiff does not

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[9] Defendant states that plaintiff may pursue a state mandamus or injunctive action to require the Sheriff to accept her bonds. "The availability of such local law remedies is evidence of the state's recognition of a protected property interest." Memphis Light, Gas & Water Division v. Craft, 436 U.S. at 11.

challenge the adequacy or sufficiency of the post-action due process hearing. To the contrary, the only question raised by the plaintiff in this case is the timing of such hearing. The Supreme Court has consistently held that "[t]he fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" Mathews v. Eldridge, 424 U.S. at 333, quoting Armstrong v. Manzo, 380 U.S. 545, 552 (1965); see also Brock, 481 U.S. at 261; Breath v. Cronvich, 729 F.2d 1006, 1010 (5th Cir.) cert. denied 469 U.S. 934 (1984). In the usual case, "some form of hearing is required before an individual is finally deprived of property interest." Mathews v. Eldridge, 424 U.S. at 333, citing Wolff v. McDonnell, 418 U.S. 539, 557-558 (1974). However, "due process is flexible and calls for such procedural protections as the particular situation demands." Morrissey v. Brewer, 408 U.S. 471, 481 (1972); Zinermon v.

Burch, 110 S.Ct. at 984. "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Mullane v. Hanover Trust Co., 339 U.S. 306, 314 (1950). To determine what procedural protections the constitution requires in a particular case, the Court must turn to the factors set forth in Mathews v. Eldridge and balance these factors in light of the facts of this case:

> First, the private interest that will be affected by the official action; second, the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the government's interest, including the function involved and the fiscal and administrative burdens that additional or substitute procedural requirement would entail.

Mathews v. Eldridge, 424 U.S. at 334-335.

The first prong of the Eldridge balancing test examines the private interest that will be affected by the official action. "To establish a denial of procedural due process, a party must show substantial prejudice." Keough v. Tate County Bd. of Education, 748 F. 2d 1077, 1083 (5th Cir. 1984); Arthur Murray Studio of Washington, Inc. v. Federal Trade Comm'n, 458 F. 2d 622, 624 (5th Cir. 1972). Undoubtedly, plaintiff would suffer substantial prejudice by the suspension of her right to execute bail bonds on behalf of individuals incarcerated in Tarrant County Jail. Indeed, plaintiff would not be made whole unless she sought a postdeprivation remedy for damages. Thus, the Court finds that the plaintiff has a substantial interest in continued enjoyment of this entitlement. This interest, however, must be balanced against the risk of erroneous deprivation of such interest by the procedures currently utilized by the Tarrant

County Sheriff's Department, along with the relative value, if any, of additional or substitute procedures.

While the Tarrant County Sheriff's Department has not sought to set forth specific procedural steps for suspension of an attorney's right to execute bail bonds pursuant to Section 3 (e), (and the state statute is silent on this issue), several informal practices and procedures can be inferred from the record. First, the Tarrant County Sheriff's Department conducts an initial investigation into whether an attorney is properly complying with Section 3 (e) of the Bail Bond Act. Once it is determined that a "reasonable possibility" exists that a violation of the Act has occurred based upon documentary evidence routinely kept in the Clerk's office, the Tarrant County Sheriff's Department notifies the attorney, by letter, of the suspension of

the attorney's right to execute bail bonds pursuant to Section 3 (e) of the Act and specifies the reason for such suspension. During the period of such suspension, the attorney is not prohibited from making ex parte contacts with the Tarrant County Sheriff's Department to inform the Sheriff's Department of any clerical errors in their initial finding. In addition, the attorney may request that the matter be set for a public post-action hearing before a neutral and detached designee of the Tarrant County Sheriff's Department wherein the attorney or counsel for such attorney may present evidence and cross-examine witnesses on the record.[10] After such hearing, the Sheriff's

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[10] Although a post-action due process hearing in this case was held some 13 days after the notice of suspension, "[a]t some point, delay in holding . . . [such] hearing [] may become a constitutional violation." Brock, 481 U.S. at 267. However, because this issue is not formally raised by plaintiff's complaint, the Court declines to decide whether the delay in proceeding to post-action hearing was so excessive as to constitute a

designee, within a reasonable amount of time, enters a final determination in the case which can be appealed to a state trial court by way of state mandamus or injunctive action.

After carefully reviewing the Tarrant County Sheriff's Department's procedures for suspension under Section 3 (e) as set forth above, the Court finds that plaintiff's request for a presuspension hearing in this case would not substantially enhance the reliability of the Tarrant County Sheriff's Department's initial determination or minimize the risk of erroneous deprivation of plaintiff's right to execute bail bonds

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violation of due process. In any event, the Fifth Circuit has directed that a hearing must be held within a "reasonable time period" after which the suspension occurs. Breath v. Cronvich, 729 F. 2d at 1011.

pursuant to the Act.[11] The principal elements for violation of Section 3 (e) of the Act essentially are (1) that a licensed attorney execute a bail bond on behalf of an inmate incarcerated in the county jail and (2) that the attorney failed to actually represent that person in his subsequent criminal case. Because the statutory conditions for suspension or revocation under the Bail Bond Act are "objective facts either within the personal knowledge of an impartial government official or readily ascertainable by him," Mackey, 443 U.S. 1, 13 (1979), the decision to suspend or revoke an attorney's right to execute bail bonds pursuant to

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[11] "When prompt postdeprivation review is available for correction of administrative error, [the Supreme Court] has generally required no more than that the predeprivation procedures used be designed to provide a reasonably reliable basis for concluding that the facts justifying the official action are as a responsible governmental official warrants them to be." Mackey v. Montrym, 443 U.S. 1, 13, 99 S.Ct. 2612, 2618, 61 L.Ed.2d 321 (1979).

Section 3 (e) is "largely automatic" since all the relevant facts needed to determine whether suspension is appropriate are based upon records routinely maintained in the Clerk's office. See Dixon, supra at 113. Further, as this case illustrates, rarely will there be a genuine dispute as to the relevant factors leading to the suspension.[12]

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[12] At the hearing before the Sheriff's designee, plaintiff and defendant agreed to stipulate to all the relevant facts. Furthermore, in the present summary judgment before the Court, plaintiff and defendant have stipulated that there are no genuine issues of material fact. Accordingly, the Court finds that there has never existed any real factual dispute that the plaintiff, in fact, bonded individuals out of the county jail for whom she failed to actually represent in their criminal case. To some extent, "[s]ince . . . [plaintiff] does not dispute the factual basis for the [Tarrant County Sheriff's Department's] decision, [she] is really asserting the right to appear in person only to argue that the [Sheriff's Department] should show leniency and depart from [state law]." Dixon, 431 U.S. at 113-114. Because plaintiff merely seeks to have the Sheriff's Department exercise discretion in her particular case, the Court finds that additional presuspension procedures would be unlikely to have any effect whatsoever on the ultimate determination

See Mackey, supra at 13; Dixon v. Love, 431 U.S. at 113; Mathews v. Eldridge, 424 U.S. at 343; Cf. Bell v. Burson, 402 at 542.

Based upon the foregoing, the Court finds that the procedures followed by the Tarrant County Sheriff's Department, albeit informally constituted as a post-action due process hearing, was sufficient under the Due Process Clause to provide plaintiff a timely opportunity to tell her side of the story to the Sheriff's designee, to obtain correction of any clerical errors, and to seek prompt resolution of any factual disputes she raised as to the accuracy of the defendant's allegations. In so doing, the Court is satisfied that the presuspension procedures chosen by the Tarrant County Sheriff's Department affords minimal risk of error and any presuspension hearing would not materially enhance the reliability of the

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made in her case.

decisional process on a Section 3 (e) suspension. "[T]he risk of error is not so substantial in itself as to require [the Court] to depart from the 'ordinary principal' that 'something less than an evidentiary hearing is sufficient prior to adverse administrative action.'" Mackey, supra at 17, quoting Dixon v. Love, 431 U.S. at 113. See also Mathews v. Eldridge, 424 U.S. at 347.

The third prong of the Mathews v. Eldridge balancing test is to identify the governmental function involved and to weigh in the balance the state's interest in the post-action hearing, as well as the administrative and fiscal burdens, if any, that would result from requiring a presuspension hearing. The state has a substantial interest in the regulation and licensing of bail bondsmen so as to guarantee

the appearance of an individual at trial.[13] In that regard, courts have traditionally allowed postsuspension hearings when: "(1) the deprivation is directly necessary to secure an important government or general public interest, (2) there is a special need for prompt action, and (3) the person initiating the . . . [suspension] has been a government official responsible for determining, under the standards of a narrowly drawn statute, that it was necessary and justified in the particular instance." Breath v. Cronvich, 729 F. 2d at 1010, citing Fuentes v. Shevin, 407 U. S. 67, 91 (1972).

The court finds that, under the facts of

---

[13] The Bail Bond Act provides in Section 1 that: The business of executing bonds is declared to be a business affecting the public interest. It is declared to be the policy of this state to provide reasonable regulation to the end that the right of bail be preserved and implemented by just and practical procedures governing the giving or making of bail bond and other security to guarantee appearance of the accused.

this case, the three Fuentes requirements for a postsuspension notice and hearing are satisfied. First, suspension of an attorney's right to proceed under Section 3 (e) is essential to protect the interest of the Tarrant County Sheriff's Department in the secure and effective regulation of the execution of bail bonds for inmates at the county jail. The government's interest is also substantially served by the very existence of a summary sanction which serves as a deterrent to attorneys who attempt to circumvent the clear requirements of Section 3 (e). Secondly, to guarantee that individuals are present in any subsequent criminal proceedings requires the prompt suspension of any attorney who executes an improper bail bond in violation of Section 3 (e). Finally, before the attorney can be suspended, the Tarrant county Sheriff's Department must make a determination that a "reasonable possibility" exists that the

statute is being violated. This requirement assures that the suspension or revocation was necessary and justified under the circumstances.

Because the risk of erroneous deprivation is minimal and the state has a substantial interest in regulating the procedures by which accused prisoners are released from jail, the Court finds that, on balance, the Tarrant County Sheriff's Department should be "entitled to impose an interim suspension, pending a prompt judicial or administrative hearing that would definitely determine" whether Section 3 (e) of the Bail Bond Act has been violated. Barry v. Barchi, 443 U.S. at 64. For reasons set forth hereinabove, the Court ORDERS that defendant's motion for summary judgement is hereby GRANTED and further ORDERS that plaintiff's complaint be dismissed with prejudice. A judgment consistent with this

opinion will be issued herewith.

Signed this 22nd day of February, 1991.

/s/ Eldon B. Mahon

ELDON B. MAHON
UNITED STATES DISTRICT JUDGE

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

FILED
APR 15 1991

CAROLYN FINDLEY PRICE	§	
	§	
VS.	§	CIVIL ACTION
	§	NO.
	§	4-90-639-E
DON CARPENTER, SHERIFF	§	
FOR TARRANT COUNTY,	§	
TEXAS AND GEORGE	§	
CAMPBELL, ASSISTANT	§	
CHIEF DEPUTY SHERIFF	§	
FOR TARRANT COUNTY,	§	
TEXAS	§	

O R D E R

The Court, having carefully reviewed plaintiff's motion to amend findings of court pursuant to FRCP 52(b) and to amend the judgment accordingly, is of the opinion that the motion should be denied.

It is so ORDERED.

Signed this 12th day of April, 1991.

/s/ Eldon B. Mahon

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

FILED

JAN 23 1992

No. 91-1553
Summary Calendar

CAROLYN FINDLEY PRICE,

Plaintiff-Appellant,

versus

DON CARPENTER, Tarrant County Sheriff, Et Al.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Texas
(CA4 90 639 E)

ON PETITION FOR REHEARING
(January 23, 1992)

Before JONES, DUHE, and WIENER, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby

Denied.

ENTERED FOR THE COURT: CLERK'S NOTE:
SEE FRAP AND LOCAL
RULES 41 FOR STAY OF
THE MANDATE.

/s/ Edith H. Jones 1/20/92

APPENDIX D

FOURTEENTH AMENDMENT

"... nor shall any State deprive any person of life, liberty, or property without due process of law;"

42 U.S.C.A. § 1983

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

TEXAS REVISED CIVIL STATUTES ANNOTATED art. 2372p-3

§ 3(e)

"Persons licensed to practice law in this state may execute bail bonds or act as sureties for persons they actually represent in criminal cases without being licensed under this Act, but they are prohibited from engaging in the practices made the basis for revocation of license under this Act and if found by the sheriff to have violated any term of this Act, may not qualify thereafter under the exception provided in this subsection unless and until they come into compliance with those practices made the basis of revocation under this Act. Notwithstanding any other provision of this subsection, no person licensed to practice law shall be relieved of liability on a bail bond he has executed for the sole reason that he has not been employed to represent the principal on the merits of the case if he has been paid a fee for the execution of the bail bond."

Supreme Court, U.S.
FILED
MAY 15 1992
OFFICE OF THE

(2)

No. 91-1714

In The

Supreme Court of the United States

October Term, 1991

CAROLYN FINDLEY PRICE,

Petitioner,

vs.

DON CARPENTER, ET AL.,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

VAN THOMPSON, JR.
Assistant District Attorney
State Bar No. 19960000
401 West Belknap
Fort Worth, Texas 76196-0401
(817) 884-1233
Counsel of Record

ANN DIAMOND
Assistant District Attorney
State Bar No. 05802400
401 West Belknap
Fort Worth, Texas 76196-0401
(817) 884-1233

Attorneys for Respondents

DUE DATE: MAY 25, 1992

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Whether the lower federal courts have any jurisdiction to review the determination of a local governmental agency that a state statute created no constitutionally protected property interest in Petitioner?

LIST OF PARTIES

PETITIONER:

Carolyn Findley Price

RESPONDENTS:

Don Carpenter, Sheriff of Tarrant County, Texas, and George M. Campbell, Chief Deputy, Tarrant Sheriff's Department

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RULES

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CONSTITUTIONAL PROVISIONS

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No. 91-1714

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

Respondents Don Carpenter, Sheriff of Tarrant County, and George M. Campbell, Chief Deputy, Tarrant County Sheriff's Department, respectfully request that the Court deny the Petition for Writ of Certiorari, which seeks to review the decision of the United States Court of Appeals for the Fifth Circuit in No. 91-1553, Carolyn Findley Price v. Don Carpenter, Tarrant County Sheriff, et al., affirming the District Court. This opinion is not reported. However, the Memorandum Opinion and Order

of the District Court is reported in *Price v. Carpenter*, 758 F.Supp. 403, 406 (N.D. Tex. 1991).

JURISDICTION

Respondents do not challenge the statutory provision on which Petitioners rely for jurisdiction, nor is the timeliness of the petition questioned.

STATEMENT OF THE CASE

By pro se complaint Petitioner, a licensed attorney, brought suit under 42 U.S.C. §1983 against the Sheriff and Chief Deputy of Tarrant County, Texas, alleging deprivation of her "property right" to write bail bonds without due process of law guaranteed under the 14th Amendment by Respondents Carpenter and Campbell.

The District Court granted Respondents' Motion to Dismiss or for Summary Judgment, and Petitioner appealed to the United States Court of Appeals for the Fifth Circuit.

The Court of Appeals affirmed the judgment of the District Court.

Petitioner, a licensed attorney, during July and until August 8, 1990, had been obtaining the release of prisoners from the Tarrant County Jail by writing bail bonds for them. However, on August 8, 1990, she was advised by letter from Chief Deputy Campbell that her bonds would no longer be accepted as to prisoners whom she did not represent in their pending criminal cases because

she did not qualify for the exemption provided in Sec. 3, Article 2372p-3, V.T.C.S., because she was not representing them in their criminal cases. Petitioner demanded that the Sheriff's Department "rescind" its action until "due process" requirements had been satisfied. Respondents construed Petitioner's letter as a request for a hearing and scheduled a hearing. It was stipulated at the hearing as follows:

> 1. "Carolyn Findley Price is a duly licensed Texas attorney in good standing . . . ";
>
> 2. "[D]uring July and August 1990 Carolyn Findley Price executed bonds for approximately 25 persons incarcerated . . . on pending criminal charges."
>
> 3. "Carolyn Findley Price has not provided legal representation on the merits of the criminal case for any of the persons stipulated in No. 2 above."
>
> 4. "[T]he bond form used by the Tarrant County Sheriff contains a statement which the attorney of record signed when executing the bond. Carolyn Findley Price has not signed that statement on any of those bonds."
>
> 5. Carolyn Findley Price is "not a licensed bail bondsman."

Following the hearing Petitioner was advised by letter by Chief Deputy Campbell that after "due consideration," it was his conclusion that the Sheriff was not required to accept bonds tendered by attorneys who did not represent the persons in their criminal cases unless they had a bail bond license.

REASONS FOR DENYING THE WRIT

A. NO CONFLICT WITH EXISTING AUTHORITY

Although Petitioner claims that the Court of Appeals decision conflicts with established precedent of the Court as held in *Memphis Light, Gas & Water Division v. Craft*, 436 U.S. 1, 19 (1978), this precedent has no application to the instant cause because unlike the plaintiff in *Memphis* Petitioner herein has no legitimate claim of any entitlement created under existing state law. Petitioner herein concedes that in order to be entitled to protection under the due process clause of the 14th Amendment a "property interest" must be created under state law, citing *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982). In order to invoke the protection of the due process clause, Petitioner must first show a state created entitlement, which, as found by the Court of Appeals in this cause, she has wholly failed to do. Hence, there is no conflict with *Memphis* or the other authorities cited by Petitioner.

B. NO JURISDICTION

Although Petitioner contended that as a licensed attorney she was entitled to exemption under Sec. 3 of Article 2372p-3, V.T.C.S., the Texas Bail Bond Act, Respondents administratively determined she was not entitled to this exemption because she did not, in fact, represent the arrested persons for whom she was attempting to write bail bonds, and refused to accept further bail bonds from her. After a hearing requested by her, Respondent Campbell reaffirmed his ruling and Petitioner sued under 42 U.S.C. §1983 claiming that she was thereby being denied due process because the Sheriff's

Department did not accord her any hearing prior to deciding to refuse to accept any further bonds from her. Petitioner has completely refused to avail herself of any of the available state law avenues of review of this administrative determination.

Instead this whole case, including the instant Petition for a Writ of Certiorari, is simply an attempt by Petitioner to obtain federal judicial review of Respondents' administrative decision that she was not within the state law statutory exemption. The Court of Appeals correctly determined that neither it nor the District Court had jurisdiction to sit as a "super review board" to pass upon the correctness of a decision on the merits by a state or local administrative body. *Bishop v. Wood,* 426 U.S. 341 (1976). The issue of whether the Respondents correctly decided the merits of the matter in interpreting and applying the applicable state law was not before either the Court of Appeals or the District Court, and was, in fact, irrelevant. Petitioner had then, and still has, ample state law remedies to correct any misapplication of the state law by Respondents.

CONCLUSION

No significant constitutional issue of national import is presented by this Petition for Writ of Certiorari, and it should be denied.

Respectfully submitted,

VAN THOMPSON, JR.
Assistant District Attorney
State Bar No. 19960000
401 West Belknap
Fort Worth, Texas 76196-0401
(817) 884-1233
Counsel of Record

ANN DIAMOND
Assistant District Attorney
State Bar No. 05802400
401 West Belknap
Fort Worth, Texas 76196-0401
(817) 884-1233

Attorneys for Respondents